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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 17 August 2000, at 10 a.m.

Chairperson: Ms. MOTOC

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The meeting was called to order at 10 a.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

(a) REVIEW OF DEVELOPMENTS CONCERNING RECOMMENDATIONS AND DECISIONS RELATING, INTER ALIA, TO:

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(i) ADVERSE CONSEQUENCES OF THE TRANSFER OF ARMS AND ILLICIT TRAFFICKING IN ARMS ON THE ENJOYMENT OF HUMAN RIGHTS;

(ii) ARBITRARY DEPRIVATION OF NATIONALITY

(agenda item 12) (continued) (E/CN.4/Sub.2/2000/2, 31-34, 38, 42 and 43; E/CN.4/Sub.2/2000/NGO/4,13 and 15)

1. Ms. W. SPALDING (World Federation for Mental Health) found it deplorable that Mr. Despouy's study on human rights and disability and the recommendations it contained had been virtually forgotten, while disabled persons had been vainly demanding for years the creation of an office of ombudsman to deal with that topic.

2. In a period of austerity, when the expression "financial implications" was recurring as a leitmotiv, it was necessary to draw on all the creativity of persons of goodwill. However, by endeavouring systematically to reduce expenditure and overdoing it, one risked endangering the physical and mental health of the participants and thus the work of the Sub-Commission. Consequently, the Sub-Commission should urgently request the Commission, the Economic and Social Council and the Secretary-General to restore to its session the fourth week that it had lost.

3. Mr. PANDITA (Interfaith International) said that, in Kashmir, for more than 10 years, religious groups of a fascist nature had been perpetrating massacres in the name of a struggle for freedom. Thus, on 1 August 2000, armed men belonging to the Al Qaida organization of Osama Bin Ladin had massacred 25 Hindu pilgrims in a village south of Srinagar. A few hours later, another terrorist group had gunned down 19 labourers at a brick kiln in South Kashmir.

4. Every time a peace initiative was taken to open a dialogue for peaceful resolution of the conflict, the external sponsors of the armed insurgency did everything to sabotage it. Such was the case of the Kargil incursion. Then, in March 2000, the murder of 35 members of the Sikh community in a South Kashmir village had undermined the peace mission of the President of the United States in the subcontinent. Likewise, the massacre of 102 persons in three days at the beginning of August had been an attempt to subvert the peace talks that the Indian Government had begun with a front-line insurgent group, the Hizbul Mujahidin. Under pressure from outside, that group had given up the three-month cease-fire it had declared some days previously. In fact, the real purpose of those sponsoring the terrorists was to keep the people in a state of perpetual enslavement, including by the massacre of pilgrims who were messengers of peace.

5. Mr. RAJKUMAR (Pax Romana), speaking also on behalf of the Saami Council and International Young Christian Students, said that peace and security were the core mandate of the United Nations system. However, the meaning of peace and security was not the same as 10 years earlier. Conflict had changed in that period from the threat of nuclear war to limited wars, from inter-State wars to intra-State conflicts. Hence, security had come to mean protecting communities and individuals from internal violence with the emphasis on prevention which, as Mr. Yokota had pointed out, was the first duty of States.

6. It was encouraging that, at its fifty-first session, the Sub-Commission had resumed consideration of the right to self-determination, which it had not examined since its thirty-first session. For their part, Pax Romana, the Saami Council and the UNESCO Centre, Barcelona, had organized in Geneva, on 30 and 31 July 2000, a seminar on "Self-determination and Conflict Transformation". The participants had reached the following conclusions: One of the main reasons for State breakdown was that the different conceptions of what constituted a people were sometimes irreconcilable; it was then that the problematic relationship between self-determination, democratization and human rights arose. For the participants in the seminar, the right to self-determination in the broad sense was rooted in basic human rights and corresponded to the desire to be free and to construct alliances and political communities based

on that desire. The right encompassed the right to development, the right to democracy and the right to select representatives. The participants had also emphasized the link between the realization of the right to self-determination and international peace and security.

7. Pax Romana therefore urged the Sub-Commission to prepare a working paper (without financial implications) on the implementation of the right to self-determination and to link that question to other items of its agenda. That should make it possible to redefine the right to self-determination in the broad sense and determine how the treaty bodies and other United Nations mechanisms could effectively implement it with a view to conflict prevention.

8. Ms. SAYEGH (General Arab Women Federation) recalled that, in its resolution 1996/16, the Sub-Commission had called for effective ways to be found of eliminating weapons of mass destruction such as those containing depleted uranium. The allied forces had used depleted uranium in Iraq, with tragic consequences for the civilian population. According to Iraqi doctors, the rate of birth abnormalities occurring in the region exposed to depleted uranium was 7 to 10 times above normal. Cancers and renal and neurological diseases were also much more frequent. The situation was all the more serious in that the medical services were unable to obtain the medical supplies needed to treat those illnesses.

9. Her organization called on the Sub-Commission to draw the attention of the international community to the violation of international law constituted by the use of such weapons and to keep the issue on the agenda for its next session.

10. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that terrorism was constantly in the headlines in many parts of the world. It was essential to draw up an international instrument on the subject and to provide Ms. Koufa with the necessary support to continue her study on terrorism and human rights.

11. Terrorism as such could not of course be condoned. Nevertheless, a question that must be asked was why peoples resorted to violence. Usually, it was because their rights had not been respected. History taught that repression and condemnation served no purpose unless accompanied by constructive action. In that regard, her organization drew the Sub-Commission's attention to the proposals it had made with a view to a peaceful settlement in the Basque Country (E/CN.4/Sub.2/2000/NGO/4). It proposed the establishment of Udalbitza (Assembly of Municipalities) and described the role the Assembly could play in establishing peace.

12. Her organization also wished to draw the attention of the Sub-Commission to the conflict in the Moluccas, which was the consequence of the population transfer policy of the former Suharto regime and the Government's lack of concern for the economic situation of the area. Those two causes had aggravated the conflict between the Christians and a Muslim population that was on the increase, largely owing to immigration.

13. The international community should send a fact-finding mission to the Moluccas if it wished to prevent a bloodbath from occurring there, as had been the case in East Timor.

14. Mr. FATTORINI (Movement against Racism and for Friendship among Peoples MRAP), speaking on behalf of MRAP, the Association of World Citizens, the Association for World Education and the Centre for Social Research, recalled that the President of the Security Council had said, in a statement made on 24 September 1999, that small arms were the weapons most frequently used in the majority of armed conflicts. In the absence of adequate regulation and controls such weapons accumulated and circulated illegally from one conflict to another, killing or wounding millions of civilians, including women and children.

15. The United Nations had a clear duty to draw up precise, universal rules governing the use of such weapons in order to confine their use to well-defined purposes. In that regard, the United Nations General Assembly had taken a welcome decision to convene a conference in 2001 on the illicit trade in small arms and light weapons in all its aspects. States Members and all participants in that conference should be urged to study the impact of such trade on human rights. Likewise, the High Commissioner for Human Rights should play an active role in the preparations for the conference, and the Commission and Sub-Commission should consider the impact on human rights and humanitarian law of the use of such weapons.

16. Mr. LERFORD (International Human Rights Association of American Minorities) said that the United States Supreme Court, in its decision 348 US 272, had decided that the land in Alaska belonged to the white race and that Alaska's indigenous peoples did not have the rights set forth in the Fifth Amendment, including the right to life, the right to property and the right to due process of law. That had been the basis for creating the Alaska Native Claims Settlement Act (ANCSA), which was racially discriminatory. In 1982 the Alaska Statehood Commission had stated in a report that ANCSA had settled nothing at all, certainly not native claims. In that context, he was making available for experts the text of a decree adopted by the Elders Council of Tununak and aimed at protecting the Alaskan native peoples' right to self-determination.

17. On a positive final note, he expressed his gratitude to the Government of the Swiss Confederation for its moral and financial support of the United Nations Institute for Training and Research; the latter had organized a programme in peacemaking and preventive diplomacy, which had been of benefit to participant native peoples.

18. Mr. BARNES (International Human Rights Association of American Minorities) said, further to Mr. Lerford's statement, that the native peoples of Alaska called for respect and recognition of their sovereign indigenous rights, including the right to decolonization and the right to reject foreign laws which adversely affected their rights and the right to self-determination.

19. Mr. NEGROTTO CAMBIASO (Observer for Italy) said that a perverse link existed between illicit arms trading and the violation of basic human rights, including the right to development. According to the Declaration on the Right to Development, adopted by the United Nations General Assembly, all States should do their utmost "to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries". So far no one had really followed that wise counsel; which was why calls for disarmament were increasingly heard from various forums. The many

tragedies witnessed in the former Yugoslavia could have been avoided if that country had been subjected to the strict arms control measures applied in the European countries belonging to the two major military alliances.

20. Unjustified military expenditure brought into question the right to development aid; but donors, for their part, had the duty to ensure more effective control, especially of illegal arms transfer and other related trafficking. The Working Group on the Right to Development, the forthcoming United Nations conference on small arms, and other forums could contribute to establishing more effective mechanisms against weapons transfer.

21. Lastly, he thanked the Sub-Commission for an in-depth examination of the multiple threats against human rights and of the means to confront them.

22. Mr. PRASAD (Observer for India) said there was urgent need for a comprehensive study of the impact of terrorism on the enjoyment of human rights. The debate on terrorism tended to become bogged down, however, because of moves by certain States and non-State actors to conceal their violence behind lofty principles such as self-determination and the freedom struggle. The Indian Government hoped, therefore, that United Nations and State entities and institutions would provide Ms. Koufa with all the cooperation she required in order to complete her study on the links between terrorism and the enjoyment of human rights. Terrorism was totally at odds with democracy, which allowed free expression of dissenting opinions by non-violent methods. The Indian Government did not agree with those who claimed that States alone violated human rights. There was an urgent need to ensure the accountability of non-State actors who perpetrated terrorist acts.

23. India was a victim of the most brutal forms of terrorism. A neighbouring country that had designs on the Indian state of Jammu and Kashmir was waging a proxy war against India. It provided terrorists with training camps, arms and explosives. It shrank from no deed to satisfy its territorial ambitions: the military dictatorship ruling that country responded to India's offers of dialogue by a call to arms.

24. The Indian Government welcomed the United Nations General Assembly's decision to begin negotiations on a comprehensive international convention on terrorism. It hoped that such an instrument would help to combat the flagrant human rights violations perpetrated by terrorists recruited, trained and financed abroad.

25. Mr. MERIC (Observer for Turkey) said that, since terrorism constituted a violation of basic human rights, there was a link between combating terrorism and protecting human rights.

26. The Turkish Government welcomed Ms. Koufa's preliminary report on terrorism and human rights, but regretted that her work had fallen behind the timetable established by the Sub-Commission, according to which, in the normal course, she should have submitted her intermediate report at the current session. The Special Rapporteur had rightly complained of the lack of financial and technical support from the Office of the High Commissioner for Human Rights. That lack of support led the Turkish Government to wonder whether the United Nations

system was taking a selective approach to human rights matters. It urged the Office to provide the Special Rapporteur, without further delay, with all the assistance she required in order to complete her study on time.

27. The idea that it was up to individuals and groups, not States alone, to protect and promote human rights was gaining ground - a development in which the Sub-Commission had played a major role.

28. Mr. HUSSAIN (Observer for Pakistan) regretted that Ms. Koufa had been unable to submit her report on human rights and terrorism. The issue was complex; firstly, the lack of a general definition of terrorism enabled States that committed aggression and occupied a territory to label those who resisted occupation as terrorists. Any definition to be adopted, therefore, should distinguish terrorism from armed struggle against a foreign occupier. Criteria that could be used in defining terrorism so as to distinguish the two ideas included relevant resolutions adopted by the United Nations Security Council, bilateral agreements between countries, and so on.

29. Terrorism was identified as a major threat to democracy and pluralism. By definition, however, a democratic and pluralist society could not exist in a country occupied by a foreign power maintaining a hold on the people by armed force. The struggle of the people against the occupying power was therefore to be seen not as terrorism but as a fight for freedom.

30. To combat terrorism called for concerted action by the international community. In that light, States should first of all renounce terrorism against peoples in the territories they occupied.

31. Mrs. MACHADO (Observer for Angola) said that the issue of terrorism and human rights was currently more important than ever, in that terrorism represented a grave threat to the sovereignty and territorial integrity of States. Contemporary terrorism differed from that once practised: it took on new forms, characterized by the adoption of sophisticated techniques reflecting the phenomenon's globalization.

32. Because of its very complexity there was still no consensus about it among the Organization's States Members, and not even an agreed definition of terrorism and the difference between it and the struggle for self-determination. Despite the lack of consensus, a number of relevant General Assembly resolutions categorically condemned all forms of terrorism that attacked human life, human rights, basic freedoms and democracy. The international community should likewise adopt effective preventive measures. Unfortunately, there was no sign of any reduction in world military expenditure. The developing countries themselves spent three times as much on armaments as on their peoples' education and health.

33. With reference to document E/CN.4/Sub.2/1994/29 on international peace and security, in which the Angolan conflict was described as inter-ethnic, she stressed that the Republic of Angola was a democratic State ruled by law and safeguarding the rights and dignity of the human person with no discrimination whatsoever, in accordance with articles 18 and 20 of its Constitutional Law. Settlement of the Angolan conflict depended on implementation of the

Lusaka Protocol and, in particular, the disarming of all UNITA forces. In that regard, the international community must play a leading role in strengthening the application of the United Nations sanctions imposed on the terrorist group of Jonas Savimbi.

34. Mr.AL-MADI (Observer for Saudi Arabia) felt that the Commission on Human Rights had adopted decision 2000/108, on reservations to human rights treaties, before having adequately studied all aspects of the question. Any future consideration of it should take full account of the work of the International Law Commission and particularly of the preliminary conclusions adopted by that Commission and the General Assembly.

35. He stressed that the Vienna Convention on the Law of Treaties, adopted in 1969, applied to all categories of treaty, including human rights treaties. To prejudice the system for reservations established by that Convention would prejudice other international instruments, in particular those relating to human rights. Despite the extreme importance of cooperation with treaty monitoring bodies, such bodies must abide strictly by their mandates, as provided for in the treaties. The Commission on Human Rights ought therefore to carry out an in-depth study on the subject with a view to adoption of a resolution stressing the importance of the matter, without prejudice to the work of the International Law Commission.

36. Mr. MIRONCHIK (Observer for Belarus) informed the Sub-Commission of the measures taken by the Government of Belarus to ensure that the parliamentary elections scheduled for October 2000 were free and fair. Firstly, the representatives of political parties that had nominated candidates for election would participate, without the right to vote, in the work of the Central Electoral Commission. Secondly, all registered candidates, regardless of political orientation, would have equal airtime on State television channels. Thirdly, a "period of trust" would be observed during the run-up to the election, and all those wishing to take part in the elections would be able to do so. Lastly, the question of expansion of parliamentary functions would be on the newly-elected assembly's agenda.

37. Mr. MOOSE (Observer for the United States of America) said that he was greatly astonished at the working paper prepared by Mr. Bossuyt (E/CN.4/Sub.2/2000/33) on the adverse consequences of economic sanctions on the enjoyment of human rights. That part of the paper relating to sanctions applied to Iraq was incorrect, biased and inflammatory, and risked the Sub-Commission's credibility.

38. The report gave a false picture of the purpose and effects of the sanctions. Moreover, the account it gave of the views of senior United States officials was a complete misrepresentation. Equally wrong was the description of who controlled sanctions. The Sub-Commission would recalled that the Security Council had decided to impose sanctions on Iraq as a result of the latter's flagrant aggression against Kuwait, and to maintain them until it could be verified that Iraq had destroyed its weapons of mass destruction. The duration of the sanctions was therefore up to Iraq itself. The sanctions, stemming as they did from resolutions adopted by the Security Council, thereby constituted international law, which should be supported and applied by all Members of the United Nations. Moreover, they did not affect foodstuffs and medicaments. As far back as 1991 the United Nations had offered the "oil for food" programme, which Iraq had refused for five years. Since Iraq's acceptance of the programme the Iraqi population's humanitarian situation had improved and would continue to do so if Iraq did not

impede the programme's implementation. The United States would continue to see to it that Iraq complied with the Security Council's resolutions, including those aimed at improving the humanitarian situation in that country, despite the manoeuvres of Saddam Hussain's regime.

39. Mr. HUSSAIN (Observer for Iraq) said that, contrary to what had just been said, the Iraqi people was perishing at the hands of the United States. Indeed, the reason why Mr. Halliday, a former coordinator of United Nations humanitarian operations in Iraq, had resigned was that, in his own words, sanctions were "destroying an entire people". In 1995 Mrs. Albright had declared it unlikely that sanctions would be ended. In an interview held in 1996 a journalist, referring to the sanctions against Iraq, had said to Mrs. Albright: "We have heard that 500,000 children have died, more than the number of children killed at Hiroshima. Do you think it was worth it?", and she had replied: "We feel it was the price to be paid". He wondered whether any Nazi would ever had dared make such statements. Likewise in 1995, a high United States official had declared himself ashamed that thousands of innocent civilians had been killed in that way without the matter being brought before the International Court of Justice. More recently, Mr. Sevan, United Nations Under-Secretary-General, had stated that the value of blocked contracts whose fulfilment would have enabled the Iraqi population's humanitarian needs to be satisfied had amounted to several million dollars.

40. It was time the United Nations and the international community assumed their responsibilities and put an end to the crime, which was a further addition to the list of those committed by the United States since Hiroshima and Nagasaki.

41. Mr. PRASAD (Observer for India), speaking in exercise of the right of reply, said that in his statement he had not named the country that had been committing terrorism against India. But the representative of Pakistan, in his statement, had sought to justify his country's involvement in the terrorism visited on the Indian state of Jammu and Kashmir in the guise of a fight for freedom. In reality, Pakistan was simply destabilizing the region as well as other parts of the world. Links clearly existed between Pakistan and international terrorism. Organizations such as that of the Mujahidin operated with the active support of the Pakistan Government. Camps where terrorists were instructed and trained were known to exist in Pakistan. Indian democracy faced a difficult problem but had the will to respond to the terrorist challenge posed by Pakistan.

42. Mr. KHAN (Observer for Pakistan), speaking in exercise of the right of reply, said that he had merely sought to provide a definition of terrorism, whereas the observer for India had decided to attack Pakistan direct. The observer for India had distorted the truth with regard to the situation in Jammu and Kashmir; everyone knew who ought to bear responsibility for the situation in the region. The non-governmental organization Human Rights Watch, a trustworthy source, had stated in a report issued in 1999 that, since 1995, Indian forces had been arming and training insurgents. Although not part of the Indian regular forces, those insurgents were, in international law, agents of the State, obeying orders given to them by the Indian army. Since early 1995 at least, moreover, India had systematically resorted to irregular forces, which had committed violations of human rights (summary executions, torture, forced disappearances and so on). The Indian Government used such forces to terrorize those who were fighting for freedom. Pakistan, a party to the Kashmir dispute, would continue to give political and diplomatic support to the freedom fighters.

43. Mr. PRASAD (Observer for India), speaking in exercise of the right of reply, referred to information published in March 2000, in a Pakistani journal, to the effect that the Pakistan Government and military forces had been supporting militant groups in Kashmir over the years. The writer of the article had wondered how much longer Pakistan would strive to conceal from the world that it was deeply involved in terrorism.

44. Mr. KHAN (Observer for Pakistan), speaking in exercise of the right of reply, said that, for his part, he could quote from thousands of Indian publications. There was also an endless number of reports, drawn up by authentic international bodies, testifying to human rights violations committed by India in Jammu and Kashmir.

45. Pakistan had been accused of committing a massacre in March 2000. But the Indian commission which had carried out an independent inquiry into the event had stated clearly in its report that Pakistan had not been responsible. Likewise, the Indian journal Hindustan Times, reporting in its edition of 8 August on another massacre, had stated that most of the victims had been killed by Indian armed forces.

46. Mr. GUISSÉ said that the practice of making reservations to treaties had created the effect of emptying most international instruments of their content. It would be best to limit such reservations, if possible, so that international instruments could be accepted more or less in their entirety.

47. With reference to the study carried out by Mr. Bossuyt (E/CN.4/Sub.2/2000/33), the aim on which the author had focused warranted encouragement for him to continue his task despite the criticisms that had been raised.

48. Mr. BOSSUYT endorsed Mr. Yimer's comment that the era of sanctions with no time limit was past. There must be limits to economic sanctions if they were to be compatible with humanitarian law.

49. Although the working document dealt with three countries, Iraq, Burundi and Cuba, attention had focused on the sanctions imposed on Iraq. But that did not mean that the other two countries had not suffered from economic sanctions.

50. With regard to paragraph 72 of the document, some people had found the sentence following the footnote reference 59 ("The States imposing the sanctions could raise questions under the genocide Convention") to be excessive; but the sentence was in the conditional, and phrased interrogatively.

51. On the subject of that footnote, relating to the statement by Mrs. Albright, if it could be concluded from the statement by the observer for the United States that those words had not been spoken, he was prepared to delete the note and the aforementioned sentence. As Mr. Weissbrodt had noted, at the time of their adoption, the sanctions had been perfectly legal. In that regard, Mr. Yokota had rightly distinguished the sanctions applied against Iraq from those of doubtful legality from the outset. It could not, however, 10 years later be claimed that the sanctions could be maintained for a further 10 years, or even 40 if necessary, without bringing their legality into question. Since they had failed to achieve their stated purpose and had harmful consequences

with regard to respect for human rights, they were not justified. They were also a crass blunder politically: whereas, 10 years previously, an overwhelming majority of States had condemned Iraq's invasion of Kuwait, there was currently a growing number opposed to maintaining sanctions.

52. In the 1980s he had been associated with a number of fruitless attempts to have Iraq condemned for human rights violations. In 1991 he had submitted to the Commission on Human Rights a draft resolution requesting the appointment of a special rapporteur on the situation of human rights in Iraq. He could not be accused, therefore, of partiality towards that country. He was nevertheless convinced that maintaining sanctions against it was not only morally reprehensible but legally indefensible.

53. Ms. KOUFA said that, when drawing up her report, she would take into account the observations made to her by Sub-Commission members, NGOs, and government observers.

54. Ms. HAMPSON, speaking on terrorism and human rights, said that States must protect their nationals against terrorism without exceeding the bounds set by international human rights law.

55. Terrorizing a people by deliberately and indiscriminately killing civilians was not simply a criminal act. Committed in the context of an armed conflict, international or otherwise, it was a war crime, even a crime against humanity, on which the whole world was competent to rule, which meant that any State could put the suspect on trial. In other words, terrorists were purely and simply criminals. Neither jurisdiction nor classification of the type of act posed a problem. There was no need to create an indefinable offence of "terrorism". What was needed was juridical cooperation in order that a State in which the suspect had been arrested could be provided with the evidence necessary to institute proceedings. In practice, the problem of impunity was encountered more in the case of persons committing acts with State involvement than in that of non-State actors.

56. The question was what should be understood by "terrorism and human rights". If it concerned not so much criminal prosecution as the responsibility of States to prohibit the movement of alleged terrorists, arms supplies, training camps and propaganda dissemination on their territory, the matter was not one of human rights law but of international law governing inter-State relations, to be dealt with by the General Assembly, the Security Council and the International Court of Justice.

57. She agreed with Mr. Kartashkin on the importance of preventing violations and the role to be played in that by United Nations human rights bodies. Any impediment to dialogue was a source of concern. On that subject, she shared the disquiet expressed by Mr. Eide the previous day about the lack of freedom in public debate in Iran.

58. She agreed with Mr. Kartashkin's proposals for encouraging countries to ratify human rights instruments. She also suspected that, if States which had not ratified the Covenants and refused to cooperate with United Nations thematic mechanisms were to be named in the Commission's agenda, they would be readier to ratify those instruments.

59. With reference to Mr. Bossuyt's working paper, she agreed with Mr. Joinet about the sanctions against Cuba and the outrageous extraterritorial pressure put on other States in that regard. The "six-prong" sanctions evaluation test was helpful, and she had no doubt that the sanctions imposed on Iraq failed to meet the criteria; nevertheless, the sanctions did not amount to genocide, if only because that involved the "intent to destroy ... a group". Moreover, it was hard to evaluate the extent to which the sanctions regime and its implementation were alone responsible for the situation in Iraq. That regime was clearly ineffective and inconsistent with the promotion and protection of human rights, but it was not genocide.

60. With reference to the statement by the United States representative concerning Mr. Bossuyt's working paper, she observed that differences of opinion did not justify personal attacks.

61. On the point raised by Mr. Alfonso Martínez, there was no special regime for human rights treaties, which fell within the purview of the Vienna Convention on the Law of Treaties. The application of the regime to particular reservations was a separate question.

62. As she had said the previous day, and as Mr. Pellet, the Special Rapporteur of the International Law Commission (ILC) had confirmed, the study on reservations to treaties would not duplicate the ILC's work. What was proposed was a study of the contents of reservations to human rights treaties.

63. Mr. KARTASHKIN thanked all those who had spoken about his report. Replying to Mr. Yokota, who had said that reservations were a negative element, he said that if a reservation enabled universality to be achieved it could be viewed in a different light; ratification of a treaty with reservations was better than no ratification.

64. With regard to Mr. Eide's comments, he was convinced that, in order to obtain effective results, the work of the proposed seminar should be restricted to considering the causes of non-ratification only of human rights instruments that reflected and enshrined the provisions of the Universal Declaration of Human Rights.

65. In the past, States had looked askance at questions put by certain United Nations bodies; but it had become accepted practice for treaty bodies to question States. The Working Group on Minorities had itself engaged in dialogue with States in that way. Without such exchanges with States the Sub-Commission's work would be of only academic interest. It was time, therefore, to open a dialogue with States about non-ratification of the Covenants.

66. He was astonished at the reaction of Mr. Ogurtsov and Mr. Yimer. Anyone could obtain the list of international treaty ratifications. Since it was no secret from anyone, he failed to see why there should be no mention of States which had not ratified the Covenants and had been requested by the Sub-Commission to do so.

67. Lastly, he thanked all those who had supported his report, particularly Mr. Rodriguez-Cuadros.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS

Draft resolutions and decisions relating to agenda sub-item 1 (c)

Draft decision E/CN.4/Sub.2/2000/L.6 (Report of the Chairperson of the Sub-Commission to the Commission on Human Rights)

68. Mr. WEISSBRODT said that he hoped that the draft decision, sponsored by all the members of the Sub-Commission, would be adopted unanimously.

69. Draft decision E/CN.4/Sub.2/2000/L.6 was adopted.

Draft resolution E/CN.4/Sub.2/2000/L.30 (Establishment of a pre-sessional working group on the administration of justice)

70. Ms. HAMPSON said that all the members of the working group on the administration of justice were sponsors of the draft resolution.

71. Mr. ALFONSO MARTÍNEZ and Mrs. DAES joined the sponsors of the draft resolution.

72. Mr. JOINET voiced reservations concerning the draft resolution. For the working group concerned, meeting during the session was a great advantage since it enabled a large number of the Sub-Commission's members to take part in its work. He proposed that a night meeting should be devoted to the work of the group during the Sub-Commission's session. Nevertheless, he would not oppose adoption of the draft resolution.

73. Mr. EIDE said that the text in question was only a very informal document that concerned the Sub-Commission's future agenda. He himself would have no difficulty in supporting it.

74. Mr. GUISSÉ said that his interest in the deliberations of the working group on the administration of justice was all the greater in that he had to present each year a report on the current situation concerning the application of the death penalty. It would, however, be difficult for him to arrive two days before the opening of the Sub-Commission's session unless the expenses were met by the United Nations. Having said that, he did not oppose adoption of the draft resolution.

75. Mr. YOKOTA agreed with Mr. Joinet that convening the working group during the Sub-Commission's session would facilitate wide participation in its work. Nevertheless, the working group would not be able, even with an extra night meeting, to get through its agenda, which was very heavy.

76. With regard to the comment made by Mr. Guissé, he shared the view that persons appointed as special rapporteurs should receive financial assistance in respect of their participation in working groups and the expenses which that involved.

77. Draft resolution E/CN.4/Sub.2/2000/L.30 was adopted.

78. The SECRETARY read out the list of members of the working groups which would meet before and after the Sub-Commission's session in 2001, namely, the Working Group on Minorities, the Working Group on Contemporary Forms of Slavery, the Working Group on Indigenous Populations and the Working Group on Communications. Consultations were proceeding with regard to representation of the Group of Western European and other States.

Draft resolutions relating to agenda item 4

Draft resolution E/CN.4/Sub.2/2000/L.16 (The Social Forum)

79. Ms. MBONU hoped that the draft resolution, sponsored by 25 Sub-Commission members, would be adopted by consensus.

80. Mr. BENGOA drew attention to an omission in paragraph 1 of the draft resolution. In three working languages - English, French and Spanish - the words "or between sessions" had been omitted.

81. Draft resolution E/CN.4/Sub.2/2000/L.16 was adopted.

Draft resolution E/CN.4/Sub.2/2000/L.20 (Intellectual property rights and human rights)

82. Mr. EIDE, presenting the draft resolution, noted that many people would like to see a link established between trade-related aspects of intellectual property rights (TRIPS) and human rights. The very point stressed in the draft resolution, submitted in the context of WTO's consideration of the matter, was the need to take human rights into account in that context. He noted that Ms. Hampson had some amendments, which he deemed constructive.

83. Ms. HAMPSON presented a number of amendments. Firstly, at the end of the first paragraph the words "subject to limitations in the public interest" should be added. In the fourth paragraph, the fourth word should be followed by "national, regional and international". In the fifth paragraph, "obligations and" should be added between "human rights" and "principles". After that paragraph, a new paragraph should be inserted reading: "6. Further requests intergovernmental organizations to integrate in their policies, practices and operations provisions, in accordance with international human rights obligations and principles, that protect the social function of intellectual property;".

84. Mr. GUISSÉ felt that, at a time when WTO was creating problems, particularly in the developing countries, it would be premature to adopt a draft resolution that seemed to endorse the existence of a highly controversial organization. The draft resolution should not be adopted until it was known what WTO was going to do; he asked for its consideration to be deferred pending a more detailed exchange of views on the subject in the coming years.

85. Mr. EIDE pointed out, in response to Mr. Guissé, that debate was currently taking place in WTO on that topic, making it precisely the right time to stress the importance of human rights. He also observed, with reference to paragraph 8, that the Special Rapporteurs on globalization should likewise take into account the studies carried out by Mrs. Daes as Special Rapporteur on protection of the heritage of indigenous people.

86. Mr. BENGOA said he shared Mr. Guissé's astonishment. He found himself confronted with a draft resolution that had not been debated despite the complex issue involved. He could therefore take no part in adopting it and would abstain if it were put to a vote.

87. Mr. ALFONSO MARTÍNEZ supported Mr. Guissé and Mr. Bengoa; he too had known nothing about the draft resolution. He would not oppose adoption of the text by consensus, subject to amending the last paragraph since, as it stood, it would be giving the Sub-Commission an unbearable workload to continue consideration of the question at the fifty-third session under the same agenda item. He suggested a rewording: "14. Decides to continue consideration of this question at a future session, when it is felt appropriate".

88. Mr. GUISSÉ, referring to Mr. Eide's observation that the question had been considered and discussed in WTO, noted that WTO was different from GATT; the latter had been an intergovernmental body obliged to observe United Nations rules, which was not the case with WTO. He had the feeling of being presented with a fait accompli. In his view, the draft resolution had no place in a United Nations body. He would oppose it and, if necessary, call for a vote.

89. Mr. OLOKA-ONYANGO said that, as one of the sponsors of the draft resolution, he strongly supported it together with the proposed amendments, and disagreed with Mr. Guissé, Mr. Bengoa and Mr. Alfonso Martínez. He recalled that the matter in question had been considered in 1998 in the context of working documents relating to globalization in general and to the question of human rights in relation to trade, investment and finance, as well as in the Sub-Commission's preliminary report, in 2000, on globalization and the full realization of human rights. There had been explicit reference in those documents to negotiations on trade-related aspects of intellectual property rights (TRIPS).

90. The previous year the Sub-Commission had adopted a resolution on the subject of trade liberalization and human rights, which had made specific reference to WTO and had raised questions concerning intellectual property rights. In his view, the current draft resolution was entirely opportune and very positive.

91. Mr. EIDE expressed his astonishment at the reaction of certain members of the Sub-Commission. The fact that WTO was not part of the United Nations system did not mean that it was a private organization. The members of WTO had to take human rights into consideration in the context of their activities in that organization. It was quite normal, therefore, for the Sub-Commission to look at questions dealt with by WTO. He had no objection to Mr. Alfonso Martínez's proposal to continue consideration of the question at a later session.

92. Mr. JOINET supported Ms. Hampson's proposed amendments, with which he had been associated and asked to be a sponsor of the draft resolution.

93. Mr. ALFONSO MARTÍNEZ thanked Mr. Oloka-Onyango for the explanations he had provided. The Sub-Commission had indeed already taken up the matter in the context of other analyses and working documents, and he himself had been one of the first to acknowledge the importance of the work. The subject should appear as an item on a future agenda of the Sub-Commission and discussed in greater depth.

94. Mr. RODRÍGUEZ-CUADROS agreed that more time was needed for discussion of such a complex question. It was important to consider the application of the intellectual property regime to traditional skills, particularly those of indigenous peoples, also its application in the case of certain medicaments, particularly those used to treat AIDS; both items were on WTO's agenda. Having said that, he supported the draft resolution.

95. Mr. YIMER, supported by Mr. KARTASHKIN, took the floor on a point of order to request closure of the debate and adoption of a decision, in view of the many draft resolutions still to be considered.

96. Ms. WARZAZI proposed, in order to shorten the discussion, that paragraph 14 should be replaced by wording to the effect that the Secretary-General was requested to provide the Sub-Commission with a report on the question at its next session. The Sub-Commission could then debate the matter on the basis of that report.

97. Mr. JOINET supported that proposal.

98. Mr. FAN Guoxiang supported the draft resolution, but with some reservations. Firstly, discussion of the matter should be continued at the next or a later session of the Sub-Commission. Secondly, he wondered whether dealing with a question as complex as that of TRIPS in the Sub-Commission, without it having fully pondered the matter with the involvement of the special rapporteurs and the Office of the High Commissioner for Human Rights, would turn out to be positive or negative.

99. The CHAIRPERSON said she took it that the Sub-Commission wished to adopt the draft resolution with the amendments proposed by Ms. Hampson and Ms. Warzazi.

100. Draft resolution E/CN.4/Sub.2/2000/L.20 was adopted with the proposed amendments.

Draft resolution E/CN.4/Sub.2/2000/L.23 (Promotion of the realization of the right to drinking water and sanitation)

101. Mr. GUISSÉ said that, since all the members had helped to prepare the draft resolution, it should be adopted by consensus.

102. Mr. JOINET proposed that it should be adopted not by consensus but unanimously.

103. Mr. WEISSBRODT said he would prefer an option by consensus.

104. Ms. WARZAZI, recapitulating the argument put forward in favour of adopting the draft resolution unanimously, said that there was no reason for not doing so.

105. Draft resolution E/CN.4/Sub.2/2000/L.23 was adopted unanimously.

Draft resolution E/CN.4/Sub.2/2000/L.36 (Optional protocol to the International Covenant on Economic, Social and Cultural Rights)

106. Mr. PINHEIRO said that the draft resolution was supported by all the sponsors.

107. Mr. JOINET recommended that the Chairperson should inform her counterpart in the Committee on Economic, Social and Cultural Rights that the draft resolution had been adopted unanimously.

108. Draft resolution E/CN.4/Sub.2/2000/L.36 was adopted unanimously.

Draft resolutions relating to agenda item 5

Draft resolution E/CN.4/Sub.2/2000/L.3 (Traditional practices affecting the health of women and the girl child)

109. Mrs. DAES, introducing the draft resolution, welcomed the constructive debate that had taken place on the subject of traditional practices affecting the health of women and the girl child. She drew attention to some alterations to the text. The first was to insert in the last line of paragraph 1, between "in particular" and "crimes of honour", the words "violence related to dowry, violence in the family and". The second was to replace, in paragraph 3, "devote part of their activities to" by "pursue". The third was to insert, before paragraph 9, a paragraph reading: "Decides to extend the mandate of the Special Rapporteur, Ms. Halima Embarek Warzazi, by two years and to request her to present updated reports to the Sub-Commission at its fifty-third and fifty-fourth sessions". The operative paragraphs would have to be renumbered accordingly.

110. Mr. GUISSÉ said he wished to be a sponsor of the draft resolution in view of the alterations made by Mrs. Daes.

111. Ms. MBONU also asked to become a sponsor of the draft resolution.

112. Ms. HAMPSON, referring to the alteration proposed by Mrs. Daes to paragraph 3, proposed retention of the original text but with the addition of "continue to" before the word "devote". She too joined the sponsors of the text.

113. Mrs. DAES accepted the modification proposed by Ms. Hampson.

114. The CHAIRPERSON said that Mr. Yokota, Mr. Alfonso Martínez, Ms. Zerroughi, Mr. Sik Yuen, Ms. Frey, Mr. Goonesekere, Mr. Joinet, Mr. Eide, Mr. Rodríguez-Cuadros and Mr. Yimer had also asked to be sponsors.

115. Draft resolution E/CN.4/Sub.2/2000/L.3 was adopted unanimously.

Draft resolution E/CN.4/Sub.2/2000/L.24 (Situation of women and girls in Afghanistan)

116. Ms. WARZAZI, presenting draft resolution L.24, read out an extract from an article published in the Herald Tribune of 17 August 2000. According to the article, the Taliban had

forced the World Food Programme to close bakeries run by women, which had been providing food for thousands of women and children. That was a perfect illustration of the situation of women in Afghanistan. She hoped that the draft resolution would be adopted by consensus.

117. Mr. WEISSBRODT said that, with regard to the substance, he supported the draft resolution tabled by Ms. Warzazi; he himself had been a sponsor, the previous year, of a similar resolution. But the Sub-Commission should not adopt resolutions on specific countries; the decision adopted by the Commission on Human Rights to that effect must be taken seriously. Since the Commission itself had stated very clearly, in its resolution 2000/18 of 18 April 2000, its position on the problems facing women and the girl child in Afghanistan, the Sub-Commission could always issue a statement by the Chairperson on the subject, as a compromise.

118. Mr. GUISSÉ observed that the spirit of the draft resolution presented by Ms. Warzazi was the main point. The target was not the country of Afghanistan as such but a particular situation, of which Afghanistan was the geographical setting. It was in that light that Ms. Warzazi's draft resolution should be viewed and supported.

119. Mr. JOINET thought that Mr. Guissé's point was valid politically but not juridically. In international law, a State was responsible for its citizens' security. In any case, since the objections raised to the draft resolution related only to drafting, not substance, he proposed the latter form of a statement by the Chairperson.

120. Ms. WARZAZI said that she had consulted the secretariat about the draft resolution. In its view, the Sub-Commission could adopt the draft without thereby contravening decision 2000/109 of the Commission on Human Rights from a juridical standpoint. The device of opting for a statement by the Chairperson was in fact a roundabout way of addressing human rights violations in countries - one which was liable to set a precedent. She stressed that the draft resolution dealt with gender-based discrimination; it would be for the Commission to rule on the draft's merits. She had already had consultations on the matter outside the Sub-Commission, and many delegations had assured her that the draft did not come within the purview of the Commission's decision to exclude any reference to a particular country.

121. Ms. HAMPSON supported Mr. Weissbrodt; a statement by the Chairperson seemed the only possible solution.

122. Mr. PINHEIRO said that he fully appreciated the points raised by Mr. Guissé. The Sub-Commission should be bold enough to speak about the situation prevailing in that part of the world and thereby demonstrate to the Commission on Human Rights its genuine concern at the human rights violations occurring there.

123. Mr. GUISSÉ, referring to Mr. Joinet's point about the State's responsibility, drew attention to the provisions of the Geneva Conventions to the effect that, when a State was invaded, the invader was responsible for human rights violations committed on that State's territory. In the case of Afghanistan, it was up to the international community to come to the aid of the invaded State. He recommended that the Sub-Commission should state its views on the question in the form of a draft resolution, not a statement by the Chairperson.

124. Mr. JOINET wondered whether the Taliban had Afghan nationality. Since the secretariat's conclusions, mentioned by Ms. Warzazi, supported her draft resolution, he would join its sponsors. He requested the Sub-Commission members who were also members of the Commission to draw the latter's attention to the doubts expressed on the matter.

125. Mr. FAN Guoxiang, speaking on a point of order, proposed that the discussion should be suspended until the next meeting.

126. Mr. WEISSBRODT, referring to the secretariat view mentioned by Ms. Warzazi, said that, as he understood it, the secretariat recommended conversion of the draft resolution into a statement by the Chairperson that could be adopted by consensus. In such a statement the Sub-Commission could indicate that it was fully aware of the Commission's decision but wished to address the situation of women and the girl child in Afghanistan in view of its gravity.

127. Ms. WARZAZI said it was important to know whether or not, from a juridical standpoint, the Sub-Commission was competent to submit such a resolution. She added that Mr. Weissbrodt's understanding of the secretariat's view was not the right one.

128. Mr. ALFONSO MARTÍNEZ noted that the secretariat's role was only advisory.

129. Mr. RODRÍGUEZ-CUADROS asked for the secretariat view, mentioned by Ms. Warzazi and Mr. Weissbrodt during the meeting to be distributed in writing to the Sub-Commission members.

The meeting rose at 1.10 p.m.